

The evolution of national policy implementation structures under the Europeanization of policy-making

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1. Introduction

In this paper I present some theoretical considerations on consequences of Europeanization of policy-making on national implementation structures. More specifically, I am looking at the impacts related to policy design and policy formulation processes for European Union Directives. In Section 2, I make some general considerations on policy design and the kinds of activities that may be developed during policy implementation. In Section 3, I discuss the issue of design of EU Directives and how they, together with EU policy formulation processes, affect national policy implementation activities. Section 4 proposes a framework to describe and trace changes in national implementation structures². Section 5 presents some general considerations on the impact of Europeanization of policy-making on national implementation structures. Section 6 presents the conclusions of the paper.

2. Some general considerations on policy implementation activities

Before addressing the issue of the impact of EU policy-making on national implementation institutions, it is important to clarify the issue of where does the implementation of EU instruments start. The relationship between policy formulation and implementation has been researched only in domestic contexts. Studies comparing the relative influence of domestic and EU factors on policy performance abound, but these do not address the question of where does national implementation actually start for EU policies, and what activities do they assume.

It is generally accepted that the conceptual distinction between policy formulation and policy implementation (proposed by De Leon in the 'stages heuristic' of the policy process) is difficult since policy formulation basically seems to happen throughout the entire policy process. I support the argument of Hill and Hupe (2003: 8) that "What is needed is a way of combining the analytical benefits offered by the 'stages' model with the recognition of the interaction between the stages." They propose to use the term 'policy-making' for the process as a whole, 'policy formation' for the early part of policy-making, and 'policy implementation' for the latter part of the policy-making process. I find the idea useful and I propose to take one step further, namely to propose a way to conceptualize an event in the policy process as suggested in Figure 1, depending on the amount of policy-making performed during implementation activities.

Since implementation activities may be very complex in terms of what types of activities are done with what aim/effect and by what type of actors, I find it useful to conceive of

¹ This paper is developed as part of my four year postdoctoral research project and a book I am currently writing on the implementation of European Union regulations. The book contains a theoretical framework to analyze the impact of EU instruments' design and policy-making processes on national implementation structures, actor-interaction processes and, consequently, policy outputs. The frame consists of an adaptation of the Structure-Conduct-Performance heuristic used in industrial economics for an actor-oriented analysis of policy implementation. Comments are welcome. Please do not quote without author permission.

² Next to EU Directives, national policy fields are also affected by EU regulations and EU Decisions, which are directly applicable (that is transposition on national legislation is not necessary and practical compliance must follow directly). While their impact on national implementation structures can also be analysed with the help of the framework proposed in Section 4, this paper focuses on EU Directives, because they represent the type of EU instrument that are supposed to enable - based on EU Treaties - a higher degree freedom for national level implementation. However, their impact appears often to be as pervasive as in the case of EU Regulations and Decisions.

implementation as *a mixture of activities*. I propose to differentiate two types of policy implementation activities that may take place sequentially or in parallel: policy-making and policy operationalisation. Clearly not all policies come “fully designed” at the end of the policy formulation process. Policy formulators may delegate - explicitly or implicitly - other actors to “finish the job” of policy specification. Such actors may be also political(ly elected) at EU/national/regional/local level or may belong to the public administration tier of governance, or bodies in the judicial system. But policy formulators may even pass the task directly to mixed public-private agents and private actors – companies, household, NGOs, who can act on their own or through interaction with the public administration. When political/judicial actors do not complete the design of policy by specifying the policy goals, policy means and schemes³ in a way that implementing actors are able to work with, the policy-making process continues in the ‘implementation stage’. Policy operationalisation is performed when the policy goals, means and schemes are specified in a way that implementing actors are able to work with them either directly, or by means of applying them for the local contexts (or lower levels in the chain) in which they have to operate, or for types of target groups, or types of industrial / social / economic activities, types of technologies/resources eligible, as envisaged by the policy program etc.

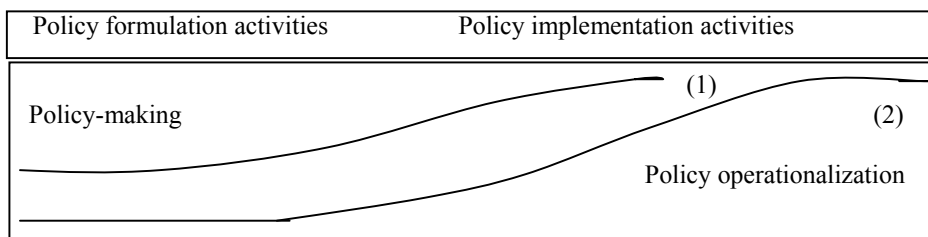


Figure 1. Types of implementation activities.

In Figure 1, I represented by means of two curves two examples of policy instrument design. The space above each curve represents the amount of policy-making being done during policy formulation activities and during implementation activities. The space below each curve represents the amount of policy operationalisation performed during formulation and implementation activities. The upper curve is an example of policy instrument (1) having a shorter track of policy-making during the implementation phase. In this case the goals, means and schemes are in more detail specified at the moment of policy exit from the ‘policy formation zone’ as compared to policy instrument (2) following the lower curve. For this second policy, implementation involves a wider scope of policy-making activities.

As regards the input and the focus of policy-making activities during implementation, I propose to differentiate between four categories of policy approaches as represented in Table 1. The ‘completeness of policy design’ as received by implementers can be generally described by means of clarity on policy goals, policy means and policy schemes⁴. The implementation of EU instruments by formal compliance may be seen also as a process of policy formation at national level. However, the difference with the formation of national legislation is that formal compliance

³ I referred to ‘policy means’ as to the ‘tools’ offered for the achievement of policy goals, e.g. policy instruments (e.g. fiscal instruments, production subsidies, emission standards etc), resources (financial, information, human, infrastructure etc), eventually also details on technical measures, technology options or location of action. I refer to ‘policy schemes’ as to the institutional/organizational aspects, such as actors involved and their roles and relationships, and the policy theory to follow for goal achievement (how policy formulators decided that policy goals can be best achieved: locus, timing and sequence of action of various actors pertaining to what is to be achieved).

⁴ This idea draws on Matland (1995) who uses a typology of policy characteristics that differentiates between low ambiguity and high ambiguity policies, where ambiguity refers to all aspects – goals, means, policy theory. However I find it more useful to refer to clarity on goals on the one hand, and clarity on means and schemes, on the other hand, based on the expectation that these are different types of ambiguity that may assume different types of interactions among actors, with possibly different bargaining mechanisms for conflict resolution.

assumes an ‘input’. The input may be any of the four situations mentioned in Table 1. Depending on how far the process of specifying goals, means and schemes occurred in the phase of formal compliance, during the phase of practical compliance the policy-making activities may continue, or practical compliance may consist only of policy operationalisation.

| Completeness of policy design (inputs for national implementation) | Means and Schemes | |
|---|--|--|
| | Not (sufficiently specified) | Sufficiently specified |
| Clear | Visionary policy approach, or Adaptive policy approach (=> policy making during implementation necessary) | Strategic policy approach (=> ready for policy operationalisation) |
| Vague or complex | Transition policy approach or Symbolic policy (=> policy making during implementation necessary) | Ideological policy approach (=> policy making during implementation necessary) |

Table 1. Inputs in policy implementation: the degree of ‘completeness’ of policy design.

| EU policy formation results in | National policy implementation assumes |
|---|--|
| Transition policy approach or Symbolic policy | Policy making for the specification of goals, means & schemes. Policy operationalisation. |
| Ideological policy approach | Policy making for the specification of goals. Policy operationalisation. |
| Visionary policy approach, or Adaptive policy approach | Policy making for the specification of means and/or schemes. Policy operationalisation. |
| Strategic policy approach | Policy operationalisation. |

Table 2. Activities that may be assumed by implementation activities.

In Section 3, I argue that the Europeanisation of policy-making has set national implementation institutions into a process of evolution by changing the patterns of implementation activities, from ones where policy-making competences have been increasingly squeezed out toward EU level, while policy operationalisation has been expanding from local/regional level towards national level. While the subsidiarity principle - guarding the design of EU Directives - is meant to safeguard policy-making on schemes and means at national level, the minimum harmonization principle has been increasingly shifting policy-making aspects of implementation activities towards EU level. This push and pull game between the harmonization and subsidiarity principles has been played in EU Committees. Being active in EU Committees, national implementation institutions have not been removed from policy-making activities. But they have changed locus of action, by this, changing also the national implementation structures.

3. Policy design and policy formulation process for EU Directives

EU Directives are adopted by the Council of Ministers and European Parliament. They are prepared and formally proposed by the Commission, who consults with Member States (and official authorities and experts of Member States), industries, interest groups. A large part of preparatory work is done by various types of Committees. Soft and/or legal-binding instruments are issued often as a follow up of Directives to clarify, specify and harmonize implementation at national level. These are also prepared by Committees.

Looking from the perspective of policy approaches differentiated in Table 1, it may be argued that based on Article 249 EC, Directives are to be designed in the style of ‘adaptive/visionary policies’ (see Table 1), because Member States are required to comply with their goals / objectives (or “the result to be achieved”). The policy means and schemes contained in Directives are not binding but considered desirable for harmonization purposes. In practice, however, harmonization has been given increasingly more importance at EU level. Besides, the increasing *expansion of EU policy-making into highly technical areas* made it unavoidable that Directives also specify in great detail the policy means and schemes to be used at national level. This

happened especially during the 1980s and early 1990s (Dimitrakopoulos and Richardson 2004: 346). Actually, in some cases, the text of the Directive may even require that the legislative or governmental instruments aimed at specifying policy means and/or schemes - in the process of national level policy making - are first submitted to the Commission to check their adequacy to policy goals. Failures of states to do so may result in the Commission suing the state before the European Court of Justice. In 1996 the ECJ ruled that national policies instruments that were not approved by the Commission as required as not enforceable (Dimitrakopoulos and Richardson, 2004: 186).

Looking at their design in practice, one can easily observe that EU Directives of all four policy approaches can be encountered. For example, the horizontal environmental directives may be considered as ideological policies: the Environmental Impact Assessment Directive (85/337/EEC as amended by 97/11/EC), the Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, the Strategic Environmental Assessment Directive (2001/42/EC), the Directive on Access to Environmental Information (90/313/EEC as amended by 2003/4/EC).

The majority of Directives, however, were designed as 'strategic policies' where not only policy goals, but also policy the forms of policy instruments and the methods to achieve goals are specified⁵. Quite often, when Directives are not directly designed as 'strategic policies', they become so due to the adoption to increasingly more detailed implementation rules. A review of research literature and analysis of EU documents lead to the observation that there is a clear the expansion of the body of *legally-binding EU implementation rules* adopted by the Council, Commission or Committees (of member state and Commission representatives). Implementation rules aim to design "the administrative process to be used in implementing a particular piece of legislation" in a national context (Bignami 1999). Under a strategic policy design of Directives, the subsidiarity principle is endangered, as they design the 'form and method' that are legally under Member State competence. As Bast (2003: 9) observes; "Confronted with the presumption that the directive is an instrument exclusively reserved for framework legislation, the directive's career indeed appears to be that of abuse of discretion". He also aptly notices (2003: 14) that: "It is significant that in almost all cases in which the legal effects of an act were contested before the Court – e.g. the direct effect produced by the provisions of a directive – the instrumental identity of the act (the fact that it *is* a directive) was not in dispute."

There have been some changes in the legal framework governing the competences of Committees for implementation rules. The Council Decision 1999/468 replaces the 87/373 Comitology Decision that codifies the types and operation of committees. The new rules produce some shifts in power, introducing a role for the European Parliament in decisions for some types of implementation rules. The main actors involved in the policy-making process with regard to EU level implementation rules are the Commission and one or more committees. Changes in rules and competences of Committees are important in the EU multi-level governance. Committees are made up of representatives of both the Commission and Members States, which has been seen as an instrument for guarding the interests of states in the new context of the Commission being the main executive authority (Dimitrakopoulos and Richardson, 2004: 340). Membership assumes one up to three representatives from each country and one representative of the Commission who is also chairman of meetings. Decisions are taken by means of qualified majority. Wessels (1998: 210-211) describes Committees as "vital arena for power struggle in a multi-level system; (...) committees are the products for a general strategy of national

⁵ For an overview of many environmental directives that can be classified as strategic policies see the summaries and main requirements of directives in the, *Handbook for Implementation of EU Environmental Legislation*, of the European Commission available at <http://europa.eu.int/comm/environment/enlarg/handbook/handbook.htm>.

administrations to construct and extend channels for their own participation, i.e. to establish access and exert influence in the political space of the EU with (...) high rating on the legitimacy scale”.

Besides, the number of implementation Committees is on the increase. There are currently more than 400 committees active and their number is still increasing (Neuhold, 2001). Some committees are specialized on implementation rules for formal compliances (national transposition) while other direct their activities at practical compliance. Comitology can be seen as the main lever in the Europeanisation of national administrative systems.

The 1999/468 Decision specifies also the circumstances when the Commission should use each of the three types of Committees (which was not done under the 1987/373 Decision):

- management committees need to be used in cases of “management measures such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programs with substantial budgetary implications”;
- regulatory committees are required for “measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, as well as measures designed to adapt or update certain non-essential provisions of a basic instrument”;
- advisory committees are involved when “it is considered to be the most appropriate”.

The three types of committees limit the discretion of the Commission to issue implementation rules to different extent. The input of the activities of these committees is represented by a proposal by the Commission on how to implement a certain Community policy. The opinion of an advisory committee has no formal consequences. However, when the proposal is submitted to a management or regulatory committees, when they vote against or issue no opinion on the proposal, the Commission is formally required to submit the proposal for approval by the Council of Ministers. The positive opinion of management committees implies the direct adoption of the respective implementation rules by the Commission. The consequences of a negative opinion from a regulatory committee are more complex. As Bignami (1999) describes it: “If a regulatory committee delivers an unfavorable opinion or no opinion at all, Parliament must be informed of the Commission's proposal to the Council. If Parliament opposes the proposal, it informs the Council, which may ‘where appropriate in view of any such position’ act on the Commission's proposal. Like the Commission, it appears that the Council is required to take account of Parliament's position, but is not bound by that position.” The type of committee and the associated procedure for adopting implementation rules may also have impacts on the legitimacy perception of national implementing actors during both formal compliance and practical compliance. Neuhold (2001: 15-17) explains that there are three major lines of criticism to the activities of committees: high complexity, lack of transparency and lack of accountability:

- the decision procedures are difficult to follow by stakeholders;
- “it is difficult to obtain information about what decisions are taken and how”; the lack of transparency implies that “committees are regarded as a Trojan horse, by which national interests are “carried into” the implementation process of community law;”
- officials representing Member States are exclusively accountable to their government, which yields concerns of democratic legitimacy.

These considerations imply that the locus of *policy-making activities associated with national implementation of Directives have been increasingly shifted upwards. In these cases, the main focus at national and sub-national governance levels often becomes policy operationalisation.* An important consequence is that some aspects of the national implementation structure applying to that policy are already specified at EU level. But this also attracts changes in the type and allocation of discretion among actors at national level, actor-function aspects and interaction patterns, competences and patterns of resource distribution and so on. The next section presents a framework for the description of implementation structures.

4. Aspects and dimensions for the analysis of national implementation structures

I conceive of implementation structure for a policy program/instrument as a set of relationships among organizations (not among individuals as Hjern and Porter [1982] consider) involved in the transformation of policy intentions into policy outputs. It is assumed that individuals take up institutional roles and organizations can be seen as actors in the implementation process. Implementation structures can be described by positioning the actors in the governance context - public authorities at different levels (local, regional, national or EU), private actors, various types of mixed agents. The actor configuration analysis should help specify the distribution, type and flow of the various types of resources and information streams necessary for implementation. But in the same time it is helpful in getting a picture of the degree of complexity of an implementation structure. I propose to describe the national implementation structures in terms of: 1) dimensions, which include: financial structure, actor-function structures, (type of) discretion structure, decision-making mechanisms, techno-resource structure and information structures; 2) governance configuration: single level (single organization or multiple organizations) or multi-level governance; 3) the degree of complexity of the implementation structure: unique, nested, parallel (adjacent). Figure 2 presents the framework for the analysis of implementation structures.

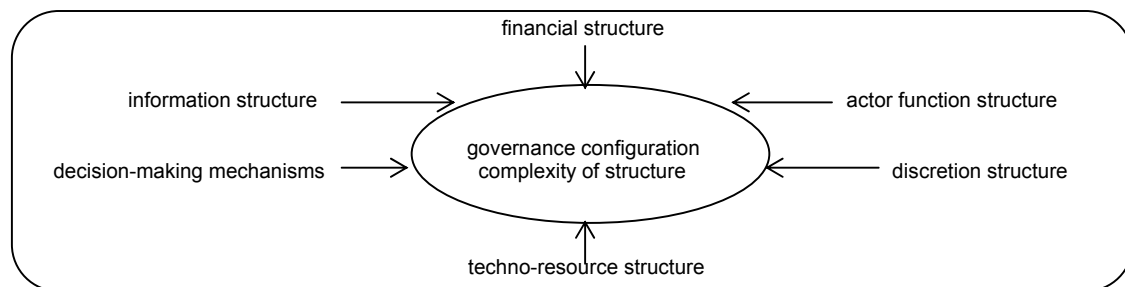


Figure 2. The elements for the analysis of implementation structures.

The implementation structure has several core dimensions: the information structure, the financial structure accessible for implementation, the discretion structure, the approvals/permitting structure, decision-making mechanisms, and the techno-resource structure. Drawing on both empirical and theoretical literature, I present here some key aspects of the selected dimensions that may need analysis for the study of implementation process and results of individual policies. The aspects that may need to be studied regarding the *information structure* refer to both procedure-wise information and content-wise information:

- the information flow across actors involved: who gets informed, when, about what, and with what consequences; the identity and roles of other actors involved in implementation;
- frequency and scope of interaction among involved actors;
- the timing and extent of consultations with those affected by implementation (target group communication);
- mechanisms for dealing with contestable scientific/technical information on which implementation relies (goal/objective related information, means related information, process related etc).
- mechanisms to ensure compliance such as reporting and monitoring requirements and ex-post evaluation at EU and member state level.
- clarity on accountability lines and responsibility lines which influence the type of discretion actors have in implementation;
- information regarding 'what and how to implement': the availability and accessibility of various types of resources needed for implementation – financial, technical, permits and approvals, guidelines for investments or solution design (e.g. best practice); here the mechanisms of knowledge collection and knowledge dissemination are important;

- the level of actor awareness on the issue at policy-focus;
- level of actor experience with the policy issue or instrument at hand, that determines the extent of learning during implementation.

The aspects that may need to be studied regarding the *financing structure* refer to:

- the financing of (technical) measures or investments required for policy implementation and the ability to pass on such costs to others such as clients, consumers, or even to a budget related fund; (costs and benefits of policy);
- who (how many actors) finances the implementation and what is the extent of contribution? Does this depend on other actors' financial contribution, non-financial services, or side-payments? Does this depend on developments in other policy areas, the evolution of the implementation processes itself, or developments internal to the financing actors?

The aspects that may need to be studied regarding the *techno-resource structure* refer to:

- the availability of resource, technical and technological options as required by policy;
- the presence of alternative options that may compete with the techno-resource options required by the policy;
- how do the required techno-resource investments fit into the available techno-resource infrastructure.

As regards the *discretion structure*, I find it useful to use the discretion typology proposed by John Burke (1990) by relating two concepts: responsibility - what follow-up steps should or should not be taken, and accountability of policy implementers - whether there is a requirement to account to others for those actions: higher authorities, themselves, clients, peers, etc. Responsibility may originate in external sources "when the direction over the implementation process is largely defined by institutions, processes and persons (e.g. higher political authorities or the public) who are external to those actually engaged in implementing policy". In this case there is actually very little discretion available to implementers. But responsibility may also originate in internal norms when "policy implementers possess greater authority to make substantive decisions". In this case the discretion of policy goal specification available to implementers is larger. Accountability: may be strong when there are "appeals to formal legal dictates or to expertise" or it may be weak in case of "inability to frame convincing accounts for acts of discretion". The typology is reproduced (with adaptation) in Table 3. Therefore, when discussing the formal power relations among public implementing agents, four types of discretion can be differentiated (cf. Burke 1990): formal-legal (strong accountability; external responsibility); professional (strong accountability; internal responsibility); fragmented (weak accountability; external responsibility); and personal-vision (weak accountability; internal responsibility).

| Accountability / Responsibility | External sources of responsibility (little discretion) | Internal sources of responsibility (internal norms for policy implementation) |
|---------------------------------|--|---|
| Strong | I. Formal-legal | II. Professional |
| Weak | III. Fragmented implementation | IV. Personal political and moral views |

Table 3. A typology of implementers' discretion developed by John Burke (1990: 137)

As regards the *decision-making mechanisms* their discussion needs to be related to the governance configuration. The idea is that they may make a difference especially for the timing and adequacy of implementation. I consider the typology advanced by Scharpf for actors' interaction in games as a suitable way to analyze the role of decision-making mechanisms in implementation processes. Scharpf differentiates between unilateral action, negotiated agreement, majority voting or hierarchical direction (1997: 12) as modes of interaction defined by the institutional setting. However it is necessary to be more nuanced and differentiate between three types of hierarchical direction. In some cases decisions may be taken by a certain authority unilaterally or 'in isolation', based on its own reasons, understanding, interests and so on. In other cases a hierarchical decision may be preceded by consultation with other actors that is formally

required, or even an agreement may be necessary according to the legal framework, for a certain authority to formulate a decision. To this typology I would still like to add the ‘spot market exchange’ mechanism. Research experience suggests that this type of decision mechanism may be involved as well in implementation, especially in those cases when the policy works by facilitating interaction among target group members.

Decision-making mechanisms are especially important aspects in the study of multi-organisation implementation. For example a negotiation-based decision mechanism that relies heavily on consultations and distributive bargaining may attract long delays in implementation. A mechanism that allows for unilateral hierarchical direction by a certain actor, while involving in the same time resource commitments - e.g financial, informational or technological - by other actors may negatively influence the motivation of the ‘left-aside’ actors, creating obstacles in the availability of resource for (adequate) implementation. Disagreements between different governance levels – e.g. local and national – are frequent, while they also often play different roles in implementation, with local authorities generally largely responsible for the allocation or coordination of various types of resources and information relevant for implementation.

Finally, the implementation structure needs to be discussed also in terms of *actor-function*. This is considered as a ‘resource dimension’ because the role/position that an actor has in implementation may enable him to take certain actions or obstructs his (formal) engagement in some processes. This variable communicates regarding what he is formally or informally capable of doing; what is allowed or demanded or simply seen ‘desirable’ and to what extent. It is necessary to distinguish between⁶:

- a) actors directly involved in making various kinds of decisions or accomplishing tasks that can be seen for example as steps towards/in an implementation strategy or a more concrete implementation plan; examples here: filling in the gaps of policy design (specifying goals/means/schemes) giving various kinds of approvals or permits, verifying information provided by others, monitoring an activity, and so on;
- b) actors that are in one way or another behind or around the actors involved in decision-making through some sort of activities such as: giving guidance or formal/informal advice, elaborating proposals, functioning as a discussion platform, lobbying (various sorts of stakeholders), acting as moderator in policy negotiations;
- c) actors that are members of the target group, and
- d) actors that hold resources relevant for implementation, but who are not included in the process (by policy design intention or by lack of awareness; these resources may be relevant only for target group actions or only for public implementers’ action or for both).

This actor differentiation may raise the question of ‘who may be in ‘group [a] actors’ seen from the perspective of the nature of actors - public administration / political agents, private agents, mixed agents?’.

- As regards formal compliance, the actor is the legislative body;
- As regards practical compliance assuming policy-making activities, it is more likely that this would involve either only public administrative bodies, or a mixture of public, private and/or mixed agents.
- As regards practical compliance assuming policy operationalisation, implementation circumstances may be so diverse that any of such actors may be in group [a].

When policy intentions have to be put into practice, various numbers and types of actors may become involved in the act of implementation. Figure 3 presents the possible ‘governance configurations’ of implementation structures.

⁶ The distinction regards only the *key roles*. Hence it does not exclude that - for instance - the target group or group [d] actors may also be involved as group [b] actors. A practical example is the situation emerged in the implementation of wind energy projects in Spain. There, local municipalities and local energy agencies involved in giving certain types of permits (environmental, administrative-planning, grid-connection) - hence group [a] - were themselves eligible to be investors and therefore they were in the same time members of the target group.

Tracing the governance configuration means tracing the actors involved. The question is how to define the governance configuration of an implementation structure having in view the four categories of actors, differentiated under the ‘action-function’ resource dimension. One may prefer to take into account all actors that play any kind of role in implementation. But this means that basically there will always be only ‘multi-level’ type of configuration. I consider that it would be more appropriate to make the categorization of single-level / multi-level by looking at the actors directly involved in making various kinds of decisions, or whose approval / design of various activities is necessary as part of the implementation process (group [a]). This does not deny that the other three categories of actors can play an essential role in the process and policy outputs. But for the sake of analytical clarity their actions and consequences of their involvement can be better studied along the resource dimensions of the implementation structure: actor-function, financing structure, techno-resource structure, information structure and types of decision mechanisms.

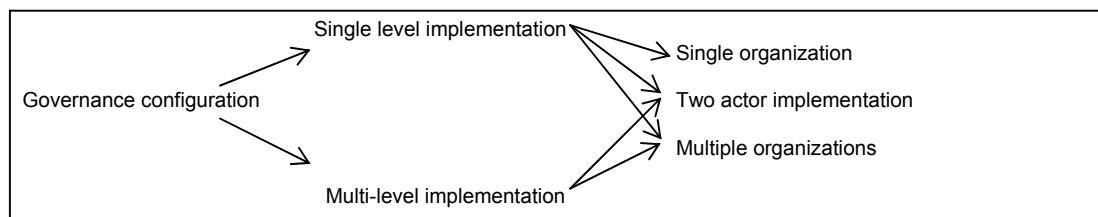


Figure 3. The ‘governance configuration’ aspect of the implementation structure

With these analytical rules in mind, it can be then considered that implementation takes place at a single governance level, when it comes to straightforward tasks such as issuing a water-use permit to an industrial production company. Although the local public implementing body having this task may have around actors assisting with advice (not formally required), or stakeholders exercising lobbying, as long as there is no other body that needs to give a formal approval as condition for the issue of the water-use permit, this should be seen as a single governance level configuration. There may be cases when more organizations share responsibilities for various aspects of transforming policy intentions into outputs. The sharing and interaction of these ‘various aspects’ of implementation may be studied with the help of the different types of resource-dimensions and degrees of complexity of implementation structure. The practical compliance with EU regulations may involve also EU institutions and agencies in direct contact with for example local actors.

The complexity of implementation structures refers to both the governance configuration and to its resource dimensions. Policy programs often involve different types of actors, for the various types of policy instruments, or types of target groups they address, or for the various policy goals envisaged by the program. The clusters of actors involved for the different aspects of the policy may be working for implementation ‘next to each other’, or they may have ‘partially overlapping’ tasks and responsibilities, while in some policy programs there may be a unique set of actors responsible for all policy goals and means.

In a similar vein, policy programs may require the same (highly similar) resource structures for implementation. But they may also invoke different arrangements, e.g. different financing structures, or types of discretion for the various types of policy instruments, or target groups, or policy goals envisaged. Similarly they may create different actor-function structures or techno-resource structures for implementation by different types of target groups. The questions emerge: Is there is a unique implementation structure for the respective policy, or are there different nested or adjacent structures? What are the consequences for the various aspects of performance of implementation? What are the consequences of complexity at the level of governance configuration, in contrast to complexities at the level of resources and information allocation and

flow? Figure 4 summarizes the typology for the complexity of structure aspect of implementation.

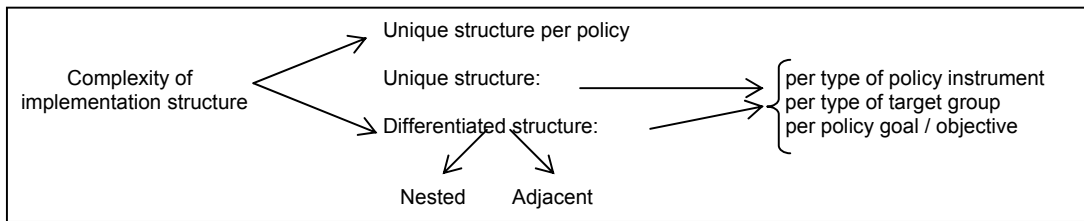


Figure 4. A typology of implementation structure' complexity.

Implementation structures emerge from the interaction of EU policy design and domestic factors and other policies pertaining to the respective instrument. The degree of detail in the specification of policy design (including extent of derogations) will influence the degree of variation in the features of national implementation structures from country to country. The close inspection of the implementation structure based on the descriptive lines traced in this Section, should support the analysis of who are the implementing actors, what are they responsible for, and what is the distribution and flow of resources (legal, material, informal) and information relevant for implementation. The degree to which such information about the implementation structure itself is clear may differ however from policy to policy, as well as for the two phases of implementation. The implementation structure can be seen as an 'under construction' element, which takes a clearer shape as implementation activities unfold. Hence, the implementation structure has a dual role: as 'space to work within' and as 'space to be designed' for the follow-up activities of the same actors, or other implementation actors. When policy-making activities take place, aiming to (further) design the policy schemes and means, some or all aspects of the implementation structure may not be defined or clear. When policy-making activities take place, aiming to specify the goals of the policy program, while the means and schemes have been sufficiently clear and completely spelled out in the previous policy activities, the implementation structure may be more clearly traced than in the preceding example.

5. Considerations on the impact of Europeanization of policy-making on national implementation structures

Europeanization of policy-making is an important development whose impacts on national implementation can be studied at different levels. One is the *macro level* – on which I focus in this paper – which takes into account the generally applicable (range of) policy design (options) of EU instruments and the general mechanisms of policy formulation at EU level for both Directives and their legally-binding implementation rules. At this level, only general considerations can be made regarding the consequences for national implementation structures. They regard especially the aspects of 'governance configuration' for the different aspects of implementation (policy making and/or policy operationalization activities), the 'type of discretion' available for various national actors, the actor-function aspect and the information structure aspect of implementation structures, as well as the decision-making mechanisms for policy-making during implementation.

A second level is that of a *policy field* such as agriculture, environmental, energy, competition, etc. Research at this level allows one to be more specific about the policy design features and particular forms of policy-formulation actors and processes for that field, that can help specify the way in which the elements and dimensions of the national implementation structure for that field changed as result of Europeanization, or may be expected to change in the future. A more complete picture may be realized by lowering to the third level of analysis, namely an *individual EU Directive and its associated implementation rules*. At this third level it will be possible to fill in all the forms of variables describing national implementation structures.

The more the values of these variables are filled in by EU Directive design and/or their associated implementation rules, the more pervasive the influence of the EU is on national implementation structures. The framework proposed in Section 4 may be used for this purpose to more easily trace changes in time in a certain policy field for a country, or compare how two or more countries have implemented a certain EU Directive, and hence to analyze the extent to which homogenisation of national implementation institutions took place under a certain EU Directive.

At the more general level it can be argued that the ‘governance configuration’ and ‘type of discretion’ for national implementation activities have changed by introducing EU actors (Commission, Committees, and indirectly the EU Parliament) as ‘group [a]’ of actors in the formal compliance process with EU Directives, based on ‘formal-legal’ type of discretion (external responsibility and strong accountability - see Table 3) over national legislative actors. The only actor traditionally and uniquely responsible the transposition of supra-national policy programs into national legislation has been the Parliament, with the Government often acting on its behalf (and a series of national actors being involved in consultations). However the requirement to have some transposition of national instruments approved first by the Commission adds EU institutions to this process. But even when such requirements do not apply, the Commission guards over the formal compliance and practical compliance and has the right to ask the European Court of Justice impose compliance, including by means of fines. Further, in some circumstances committees can be seen as ‘group [b]’ of actors, when they prepare documents to be approved by others – the Commission, or the Council of Ministers or the European Parliament. However, committees have no legal power to enforce implementation rules.

As regards the type of discretion during practical compliance activities, public administration actors in Member States experience restrictions: although all four types of discretion mentioned in Table 3 may be encountered in the various policy fields, there appears to be an increasing dominance of the ‘formal-legal’ and ‘professional’ types of discretion in relation to EU institutions. This means that EU exercises increasingly strong accountability mechanisms. When harmonization interests are considered dominant this is accompanied by ‘external responsibility’ (cf. Burke, 1990), resulting in ‘legal-formal’ type of discretion. When the subsidiarity principle is given priority, national implementers are allowed to use internal norms for policy implementation which leads to ‘professional type of discretion’. However, in some policy fields, or with regard to some EU Directives, the Commission may not exercise ‘strong accountability’ in practice – be it due to low political priority, or workload. In such cases the use of ‘fragmented implementation’ or ‘personal political views’ of national implementers may be observed.

As regards the actor-function dimension, target groups and stakeholders are given new opportunities to influence implementation rules directly, by means consultations (suggesting also a horizontal/sideways shift in EU governance). Target groups become also members of ‘group [b]’ types of actors, although this may happen to different degree in the various policy fields. NGOs are a continuously growing actor-category in the processes of formulating EU implementation rules. According to Wessels (1998: 226) “In 1995 there were 1998 representations of interest groups in a restricted interpretation and 2175 in a broader version. Their level of organization differs from one policy field to another with apparently more advanced organization of action and relationships in corporatist policy fields such as agriculture.”

The decision-making mechanisms for policy-making during implementation have also different patterns. Formerly, national implementers with policy-making competences could design implementation rules based on unilateral hierarchical decision, or hierarchical decisions based on consultations or agreements with other national actors. Under the Europeanization of policy-making, increasingly more decisions are taken by the representatives of Member States in Committees where ‘majority vote’ is the decision mechanism. The details of the decision-procedure differ from one policy field to another, which means that the analysis need to lower at the level of policy field or even policy instrument in order to make more precise pronouncement on how the Europeanization of policy-making affects this dimension of national implementation

structure. However, at macro level, the decision mechanisms of negotiated agreement and majority vote appear to become increasingly more important in implementing EU Directives.

Insights into the impacts of the Europeanization of policy-making on the dimensions of 'complexity of implementation structures', and the dimensions of information structures, financing structures, and techno-resource structures can be best gain by lowering the level of analysis at the level of policy field or even individual EU Directives.

5. Conclusions

A major general factor in the changes of national implementation structures has been the change in the content of policy implementation activities. Considering policy implementation as a mixture of policy-making (on policy means and/or policy schemes) and policy operationalisation activities, it may be argued that an increasing extent of policy-making activities take place at EU level - either directly by means of EU Directives' design or by means of EU implementation rules - while policy operationalisation activities often become the main activity in the national content. The push and pull game between the harmonization principle and the subsidiarity principle - played to large extent in the EU Commission and the hundreds of EU Committees - seems to have resulted in the domination of the harmonization principle. The impact of this on national implementation structures differs from one policy field to another and detailed insights may be best gain by the analysis of the EU Directives applicable to the respective policy field, as well as EU Regulations and Decisions which are entirely legally-binding (as to the policy goals, means and schemes they may include). Implementation structures may be analyzed in terms of 'governance configuration' for implementation, 'complexity of governance' and various 'resource dimensions', as proposed in Section 4. The more the values of these variables are filled in by EU Directive design and/or their associated implementation rules, the more policy-making activities assumed by the implementation process have already shifted upwards, at EU level, while national implementation institutions have evolved to develop policy operationalisation activities, with consequences for actor roles, the motivation and resources of implementing agents, relationships among actors. In turn these may affect policy outputs in ways that need to be more closely researched.

References

- Bast, J. 2003. "On the grammar of EU law: legal instruments", Max Planck Institute for Comparative Public Law and International Law, Jean Monnet Working Paper 9/03. Heidelberg.
- Bignami, F. 1999. "The Administrative State in a Separation of Powers Constitution: Lessons for European Community Rulemaking from the United States", Max Planck Institute for Comparative Public Law and International Law, Jean Monnet Working Paper 5/99.
- Burke, J. 1990. "Policy implementation and the responsible exercise of discretion", in *Implementation and the Policy Process: Opening Up The Black Box*, eds. D.J Palumbo & D.J. Calista.
- Dimitrakopoulis, D., & Richardson, J. (2004). Implementing EU public policy. In: Richardson, Jeremy (Ed.), *European Union: Power and policy-making* (2nd edition, pp. 335-356). Routledge.
- Hill, M. and P. Hupe. 2004. *Implementing Public Policy*. Sage Publications.
- Hjern B. and D. Porter. 1982. "Implementation research as empirical constitutionalism" in *European Journal of Political Research*, 1982 (2), 159-172.
- Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 1999 L 184/23.
- Neuhold, C., 2001, Institute for Advanced Studies Vienna, "Much ado about nothing: Comitology as a feature of EU policy implementation and its effects on the democratic arena". Paper presented at the ECPR Workshop: Governance and Democratic Legitimacy, 6 – 11 April 2001, Grenoble.
- Matland R.E. 1995. Synthesizing the implementation literature: the ambiguity-conflict model of policy implementation", in *Journal of Public Administration Research and Theory*, vol. (2) pp. 145-174.
- Scharpf, F. 1997. *Games Real Actor Play: Actor Centered Institutionalism in Policy Research*. Westview.
- Wessels, W. 1998. "Comitology: fusion in action. Politico-administrative trends in the EU system" in *Journal of European Public Policy* 5: 2, June 1998: 209-34.